Supreme Court, U.S.
FILED
JAN 8 1987
JOSEPH F. SPANIOL, JR.
CLERK

86-1135

No. 86-

*In The*

***Supreme Court of the United States***

October Term 1986

Bill J. Cory,

Appellant,

v.

Commonwealth of Virginia,

Appellee.

On Appeal From the Supreme Court of Virginia

# Jurisdictional Statement

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## QUESTIONS PRESENTED

1. Whether Commonwealth of Virginia statute 46.1-198 prohibits due process making it repugnant to the due process and equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and Article I, Section 8 of the Constitution of Virginia.

2. Whether the Circuit Court of Arlington County, Virginia transgressed the Appellant's right to due process and equal protection of the laws by denying him evidentiary use of radar manuals at trial so as to violate the Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States and the Constitution of Virginia, Article I, Section 8.

3. Whether the Supreme Court of Virginia deprived the Appellant of equal protection of the laws and due process as provided by the Fourteenth Amendment of the Constitution of the United States by denying the Appellant the right to petition in the Supreme Court of Virginia for Appeal as provided by Virginia Statutes 17-116.07 and 17-116.08, Code of Virginia 1950, and the Constitution of Virginia, Article VI, Section 1.

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**In The Supreme Court of the United States**

October Term 1986

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No. 86

Bill J. Cory,

Appellant,

v.

Commonwealth of Virginia,

Appellee.

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On Appeal From the Supreme Court of Virginia

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Jurisdictional Statement

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The Appellant appeals from the final judgment and order of the Supreme Court of Virginia entered 18 November 1986 denying the Appellant his right to Petition for Appeal. The gravamen of this case is that Commonwealth of Virginia Statute 46.1-198, checking on speed with electrical devices, prohibits due process and cannot be constitutionally applied. The Appellant properly entered the Circuit Court of Arlington County, the Court of Appeals of Virginia, and the

Supreme Court of Virginia. Decisions in each count violated the Appellant's right to equal protection of the laws and due process as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

## OPINIONS BELOW

The findings of fact and conclusions of law are set forth in the attached Appendix. The final judgment order of the Supreme Court of Virginia appealed from is reprinted in the Appendix, p. 14A. The prior opinion and order of the Court of Appeals of Virginia is set forth in the Appendix, pp. 6A-13A. The Circuit Court of Arlington County judgement order of conviction and order to vacate are reprinted in the Appendix, pp. 2A-5A.

## JURISDICTION

The final judgment order of the Supreme Court of Virginia pursuant to a decision that the appellant did not have the right to petition for appeal was entered on 18 November 1986 (Appendix p. 14A). At

trial and throughout the proceedings in state courts, the Appellant drew into question the validity of Commonwealth of Virginia Statute 46.1-198 (Appendix pp. 25A-27A) on the ground of its repugnance to the Constitution of the United States. The Supreme Court of Virginia held subject matter jurisdiction for the Appellant's Appeal by virtue of the statutes and the Constitution of Virginia (Appendix pp. 19A-25A). Timely Notices of Appeal were filed with the Clerk of the Supreme Court of Virginia and the Clerk, Circuit Court of Arlington County (holder of record) on 8 January 1986 (Appendix page 1A). The jurisdiction of the Court is invoked pursuant to Title 28 USC, Section 1257(2). *Local 174, Teamsters, Chauffeurs, etc., v. Lucas Flour Co., Wash. 1962, 82 S.Ct. 571, 369 U.S. 95.*

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Sections 1 and 2, the Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States, and Title 42 USC, Section 1983 are reprinted in the Appendix, pp. 15A-18A. Article I,

Sections 8, 14, and 15, Article VI, Section 1 of the Constitution of Virginia; and Code of Virginia, 1950, Statutes 46.1-198, 17-116.07, and 17-116.08 are set forth in the Appendix, pp. 19A-27A.

## STATEMENT OF CASE

This case sets forth a constitutional challenge to the Code of Virginia, 1950 Statute 46.1-198, checking on speed with electrical devices, Appendix p. 25A-27A. The enforcement measures contained in the Statute, and the manner in which the Courts of Virginia administer the Statute and compulsory process for an accused to call for evidence in his favor, contravene the equal protection principle in the due process clauses of the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States.

The Appellant was arrested for speeding 43 mph in a 30 mph speed zone in Arlington County on 29 August 1984. He was convicted on 4 October 1984 in General District Court and appealed to Circuit Court on 5 October 1984.

At trial in Circuit Court on 29 January 1985 the Appellant contested the speeding violation on the grounds that:

> The arresting officer had not set-up or operated the radar with the necessary competence to determine the speed of his vehicle.
>
> The Certificates of Calibration for the speedometer of the test vehicle and the radar system should not be admitted as evidence since they did not meet statutory requirements.
>
> The motion to quash his subpoena duces tecum should be denied since the radar manuals requested were material to his defense and without their evidentiary use he could not receive due process.
>
> The Commonwealth of Virginia Statute 46.1-198, checking on speed with electrical devices, was severely lacking in substance and could not be constitutionally applied.

On 11 January 1985 the Appellant caused a subpoena duces tecum to issue for the radar manuals controlling the operational performance and employment of the radar system used to check the

speed of his vehicle on the day of arrest. The radar manuals were to be used to prepare the Appellant's defense and at trial as an evidentiary standard for the proper operation of the radar in determining the competence of the radar operator before the finder-of-fact. The trial court granted the Commonwealth's motion to quash the Appellant's subpoena duces tecum and, subsequently, a conviction of the Appellant, finding that the Appellants right to due process had not been infringed (Appendix pp. 2A-4A).

The court of Appeals awarded the Appellant an Appeal from petition on 1 November 1985. In checking the record in Circuit Court, the Appellant found that the evidentiary certificates of calibration for the radar and speedometer of the test vehicle were missing, and on 12 November 1985 requested the trial judge to order the missing evidence returned to the record. In lieu of and as a consequence, the trial court entered an order on 22 November 1985 (Appendix pp. 5A) vacating the judgment order of conviction docketed on 6 February 1985 (Appendix p. 2A-4A), and

revoking the Appellant's Appeal awarded by the Court of Appeals of Virginia.

The Appellant opposed the Circuit Court order to vacate by motion to the C ›urt of Appeals. This was necessary since the Circuit Court order of 22 November 1985 (Appendix p. 5A) was void by mandate pursuant to Rule 1:1, Rules of the Supreme Court of Virginia. The Court of Appeals continued the appeal without acting on the motion and both parties presented briefs and oral argument to a three-panel division of the Court. On 14 August 1986 the Court of Appeals of Virginia entered an opinion and decree affirming the judgment of the trial court (Appendix pp. 6A-13A).

The Court of Appeals opinion stated that the radar manuals were not evidentiary in nature since the Appellant's intended purpose of the subpoena duces tecum was for discovery. After advancing this theory, the Court of Appeals concluded that the constitutional questions need not be addressed.

The Appellant submitted a timely Petition for Appeal to the Supreme Court of Virginia, insisting that

Virginia Statute 46.1-198 transgresses the equal protection and due process clause of the Fourteenth Amendment to the Constitution of the United States. The primary questions raised in the petition were presented by assignment of error to the Court of Appeals, and were the same questions raised throughout the pleadings and before in the lower courts. The Supreme Court of Virginia rejected the Appellant's Petition on the ground that he did not have the right to petition that Court for appeal (Appendix p. 14A). The pleadings were part of the record before the Court, thusly the manner in which the Supreme Court of Virginia decided the issue reflected additional good cause and gave rise to the appeal to this Court.

## SUBSTANTIALITY OF FEDERAL QUESTIONS

The Citizens of Virginia are prohibited from receiving due process by the enforcement procedures incorporated in Code of Virginia, 1950, Statute 46.1-198, checking on speed with electrical devices; and by the manner in which the Courts of Virginia administer due process in relation to the statute. The statute as

applied in Virginia is wrongfully used for the purpose of revenue gathering, rather than the control of traffic on the highways for the safety of the public. Motorists are singled out as a separate class for the taking of privileges and property without due process. The right to the Public to interstate travel without statutory burden is infringed by the Virginia Statute under the Equal Protection Clause of the Fourteenth Amendment, and the Privileges and Immunities Clause of Article IV, Section 2 of the Constitution of the United States. In pertinent part:

> The citizens of each state shall be entitled to all Privileges and Immunities of citizens in the several states.

The flow of interstate commerce entering the Nation's Capitol through Virginia insures that numerous citizens of other states are adversely affected by the lack of due process and equal treatment accorded under this statute.

* * * * * * * * * *

1. The Appellant's first question is whether Virginia Statute 46.1-198, checking on speed with electrical devices, prohibits due process making it repugnant to the due process and equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and Article I, Section 8 of the Constitution of Virginia. Statute 46.1-198 (Appendix p. 25A) in pertinent part:

> The speed of any motor vehicle may be checked by the use of radio microwaves. . . . The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any Court. . . . In any court . . ., a certificate, executed and signed by the officers calibrating or testing such device for its accuracy, and stating time of such test, type of test, and results of testing when such certificate is accompanied by a certificate . . . showing the calibration or accuracy of the speedometer of any vehicle employed in calibrating or testing such device, and when and by whom . . . calibration was made, shall be admissable when attested by one officer. . . . The driver . . . may be arrested . . . provided the arresting officer is in uniform and displays his badge of authority; provided that such officer has observed the registration of the speed of such motor vehicle by the radio microwaves. . . .

The Appellant was arrested on 29 August 1984, convicted of speeding (43 mph-30 mph speed zone) in

General District Court on 4 October 1984, and appealed to the Circuit Court of Arlington County on 5 October 1984. On 29 January 1985, a speedometer calibration certificate dated 10 October 1984 (Appendix p. 28A), and thusly prepared after the Appellant's arrest and conviction, was admitted into evidence at trial de novo in Circuit Court to meet the requirements of Statute 46.1-198 (Appendix p. 25A).

The speedometer calibration certificate which was before the Court, if nothing else, had not been properly certified in time on 10 October to be used to test a radar on 29 August. Since the Commonwealth offered no proof that the test vehicle's speedometer had ever been calibrated prior to testing the radar, the radar certificate was also rendered invalid.

However the Statute requires no more than this—any officer in uniform, with a badge of authority, is acceptable and qualified to operate, select, and present prima facie radar information at a court in law on the criminal charge of speeding. The courts in Virginia, in accordance with the Statute, accept any paper titled "Certificate" as admissable into evidence

on its face, based on the presumption that the certificate is "proper"; and in turn grant criminal convictions based on prima facie radar information.

The Arlington County certificate showed the speedometer of the test vehicle read true speed at each point purportedly tested, i.e., 30.0 mph, 40.0 mph etc., which assigned an accuracy to the speedometer impossible to achieve (Appendix p. 28A). The Appellant submits a calibration certificate showing the results of a speedometer that was actually road tested, citing *Commonwealth vs. Cory, Circuit Court of Fairfax County, C No. 48293, 15 May 1986,* (Appendix p. 29A). In this case the Fairfax County certificate showed the speedometer to be inaccurate, deviating from 1-3 mph at most points tested. One certificate was six weeks late and the vehicle was never tested on the road; the other vehicle was road tested, found to be inaccurate, and never corrected; both certificates were admitted into evidence and convictions granted.

At trial, the Commonwealth presented prima facie radar information based on presumptions that the evidence had been properly obtained. *The terms of the*

*statute make the evidentiary presumptions "prima facie true and correct," and this pyramiding of presumptions directly challenges the constitutionality of the Statute.* The Appellant did not draw into question the prima facie aspect of the Statute, per se, in the lower courts and does not do so now. Rather, his case-in-chief is that the Statute fails to provide the standards necessary to provide "qualified" prima facie evidence. This case is an offer of proof that the Courts in Virginia refuse any alternative to a conviction under the Statute (Appendix pp. 6A-13A).

Statute 46.1-198 is constitutionally constrained due to its total lack of definitions and requirements to accomplish procedures. The Statute leaves all standards to the ambiguous interpertation of others, and as such unlawfully delegates legislative authority. Lack of specific criteria, necessary for a scientific instrument to be routinely used in criminal law enforcement, provides the essential elements making the statute vague and ambiguous to the point it cannot be constitutionally applied. "The court found that the rules of the Game and Fresh Water Fish

Commission were vague and overbroad, thus precluding constitutional application." State v. Cummings, 365 So. 2d 153, 156 (Fla 1978).

Statute 46.1-198 fails to meet the condition of providing qualified prima facie evidence since it is void of standards to accomplish any of the following requirements within the terms of the statute or by regulation:

> The law enforcement officer is not required to identify and make an independent visual determination that the vehicle is operating in excess of the speed limit.
>
> The radar gathered information is not required to be clearly assignable to the speed of a single vehicle.
>
> Engineering techniques such as automatic speed locks, audio alarms, audio Doppler, etc., are not addressed.
>
> No definition of terms is provided, yet a scientific instrument is used which lacks familiarity.

The statute does not require that all radars used meet minimum design specifications and be certified by the DMV.

Standards are not provided applicable to the various types of traffic control radars in use today, i.e., tripod and vehicular mounted, moving and stationary, and the modern hand-held radar.

Precise accuracy limits are not stated for the radar or the speedometer of the test vehicle.

Time requirements of testing for accuracy of the radar and the speedometer of the test vehicle are not stated.

The radar is not required to be periodically calibrated in accordance with the manufacturer's instructions by an FCC licensed technician.

The radar operator is not required to take training or to be certified.

Radar manuals are not standardized to provide proper techniques of operation and uniform employment by radar operators.

Checks for proper operation of the radar set to be made by operators different from testing for accuracy are not required.

No periodic maintenance procedures or times for maintenance are required.

The Certificate of Calibration for the radar is not required to be signed by a radar-trained certified officer.

The speedometer calibration certificate is not required to be signed by a certified technician.

When the facial validity of a statute is challenged, the test applied is whether the language employed is so vague and indefinite that a person of common intelligence must speculate about its meaning and differ as to its application. Thusly, a statute must constitute proper notice of activities and provide ascertainable standards that are defined in detail and specificity. In the case of *Caldwell* v. *Commonwealth*, the Supreme Court of Virginia found the "Hit-and-run" statute to be so vague and indefinite as to be unconstitutional because it failed to specify the time and the person to which information must be given.

*Caldwell v. Commonwealth, 198 Va. 454, 94 S.E. 2d 537 (1956).*

"Lack of specificity in statutory definitions will render those portions of the statute unconstitutional." *Aztec Motel, Inc., v. State ex. rel. Faircloth (Fla 1971), 251 So. 2d 849, and State v. Dinsmore, 308 So. 2d 32 (Fla 1975).* In *Aztec Motel v. State,* the statute concerned constituted a denial of due process because it failed to contain a standard by which proscribed acts could be determined.

The Virginia Statute does not provide standards or specify time limits within which any procedure must be accomplished, and similarly denies due process.

Statute 46.1-198 cannot be administered in the same even manner throughout the Commonwealth; thereby failing to provide fundamental fairness to the Public, and infringing the Constitutional right of the citizens of Virginia to uniform government (Appendix p. 20A). *Watson v. Patterson, 358 F.2d 297, 385 U.S. 876 (1966).* . . .

* * * * * * * * * *

2. The second question to be reviewed is whether the Circuit Court of Arlington County transgressed the Appellant's right to due process and equal protection of the laws by denying him evidentiary use of radar manuals of trial.

The Circuit Court of Arlington County denied the appellant due process and equal protection of the laws by finding him guilty of speeding (Appendix pp. 2A-4A). The right of compulsory process for an accused to acquire evidence in his favor is set forth in the Constitution of Virginia and the Constitution of the United States, and is well documented in common law. *Simopoulos v. Commonwealth, 221 Va. 1059, 277 S.E.2d 194, Aff'd.--U.S.--, 103 S. Ct. 2532, 76 L. Ed.2d 755 (1983).* In Virginia, a traffic violation is adjudicated pursuant to the Rules of the Supreme Court of Virginia, Part Three A, Criminal Practice and Procedure. Prior to trial in the Circuit Court of Arlington County, the Appellant rightfully caused issue pursuant to Rule 3A:12(b), Rules of the Supreme Court of Virginia, of the subpoena duces tecum served on the

Arlington County Police Department for radar manuals in whose possession those manuals were held. *Cox v. Commonwealth 227 Va. 324, 315 S.E.2d 228 (1984).*

The radar manuals requested were those provided with the radar system by the manufacturer covering theory and functioning, calibration and testing, operating instructions, set-up and operational employment. The manuals were directly related to the performance of the radar system used to check the speed of the Appellant's vehicle on the day of arrest. While waiting at the radar site for his summons to be completed, the Appellant observed the radar display and noted the radar operator was improperly arresting motorists. Simply, the radar operator did not know how to use the radar. The radar manuals were to be used as an evidentiary standard to prove the radar was not tested or operated in accordance with the manufacturer's instructions on the day of arrest, and to assess the degree of operator competence before the trial judge. A substantial basis for materiality existed for preparation of the Appellant's defense and

as exculpatory evidence at trial (id. 324). Additionally, the request was reasonable.

The trial court granted the Commonwealth's motion to quash the subpoena duces tecum and the Appellant was denied the evidentiary use of the radar manuals at trial. Since the subpoenaed information was not furnished, the name of the radar manufacturer or the type of radar was never known to the Appellant, preventing him from obtaining the manuals from other sources.

The Appellant stated at trial that he could not receive due process because the evidentiary use of the radar manuals had been denied; thusly he could not adequately attack the reliability of the testing procedures, radar employment, or operator competence. From *Stover v. Commonwealth, 211 Va, 789, 795, 180 S.E. 2d 504, 509 (1971), cert denied, 412 U.S. 953 (1973)*, "it is now settled that the suppression by the prosecution of evidence favorable to the accused upon request violates due process when the evidence is material either to guilt or to punishment,

irrespective of the good faith or bad faith of the prosecution."

On 29 January 1985 in Arlington County Circuit Court, the Appellant was denied due process as demanded by the Fifth and Fourteenth Amendments of the Constitution of the United States and guaranteed under the Constitution of Virginia, Article I, Section 8. Article I, Section 8, of the Constitution of Virginia, provides that in criminal prosecutions, the accused has the right "to call for evidence in his favor." *Bobo v. Commonwealth, 187 Va. 774, 779, 48 SE. 2d 213, 215 (1948). Winston v. Commonwealth, 188 Va. 386, 49 S.E. 2d 611 (1948).* The right "to call for evidence in his favor" applies with equal force to the procurement of documentary evidence. *Cox v. Commonwealth, 227 Va. 324, 315 S.E. 2d 228 (1984).* The radar manuals to be introduced as evidence at trial were needed to properly prepare the Appellant's defense prior to trial, and he had requested by subpoena duces tecum that the manuals be made available for inspection and copying at 11:00 hours, 23 January 1985, Office of the Clerk of Court, Arlington County. "An accused has a

constitutional right to call for evidence in his favor, which includes the right to prepare for trial by procuring both testimonial and documentary evidence. In order to prepare for trial, an accused and his counsel must have sufficient time to investigate the case and to evaluate the evidence that is procured." *Gilchrist v. Commonwealth,--Va.--, 317 S.E. 2d 784 (1984); Lomax v. Commonwealth,--Va.--, 319 S.E. 2d 763 (1984).*

The Supreme Court of Virginia in a 1956 decision concerning this same Statute stated: "The statute neither shifts the burden of proof to a defendant charged under it nor deprives him of the presumption of innocence, but merely shifts the burden of going forward with the evidence." *Dooley v. Commonwealth, 198 Va. 32, 92 S.E.2d 348 (1956), appeal dismissed, 354 U.S. 915, 77 S. Ct. 1377, 1 L.Ed. 2d 1432 (1957).* When the Appellant attempted to obtain the evidence necessary for his defense and go forward with it, he was denied his right to do so by the trial court.

At trial, the Commonwealth presented prima facie information in the form of testimony from the radar operator that the number 43, indicating 43 mph, appeared on the radar display. Essentially this is all the Statute requires to be presented. The Statute does not specify time limits or accuracy requirements to be stated on the calibration certificates. Officers certify only as to the "authenticity" of the certificates and the "results" obtained as provided for in the Statute, all of which are similarily unquestionable since the certifying officer is not required to be present in Court.

All acts which should be required in the Statute by specific standards are presumed to have been properly accomplished (see p. 14). The fact is that the Statute is based on a foundation of innumerable presumptions. The most condemning feature of the Statute is that it makes "all well" by declaring the radar information, gained as a result of presumptions, prima facie true and correct.

*The denial of the right to obtain evidence by subpoena to defend himself at trial placed a grievous*

*burden on the Appellant preventing him from receiving due process.* The denial of the subpoenaed manufacturer's instructions prevented the Appellant from adequately questioning the radar operator and making an offer of proof before the finder-of-fact. The Supreme Court of Florida held, "as with other scientific evidence, the defendant has the right to attack reliability of scientific tests or equipment, such as speed-testing radar, and competence of the operator," further stating, "where operating manual for radar testing device was available to Appellant, and in fact, was a part of record of case, Appellant was not prejudiced in any manner. . . ." *Yolman v. State, 388 So. 2d 1040 (Fla. 1980); State v. Bender, 382 So. 2d 697 (Fla. 1980).*

The Court of Appeals of Virginia substituted its own belief for those of the Appellant and the trial court in concluding that the Appellant's intended purpose for the subpoena duces tecum was for discovery, rather than for production of the manuals as evidence (Appendix p. 10A). The Commonwealth's argument had been presented in General District Court

prior to trial de novo in Circuit Court. The Appellant did not need discovery, rather the radar information was prima facie and the Appellant required hard evidence to present before the Court. The amorphous definition of discovery assigned by the Court of Appeals did not cite an authority. The Court's finding pierced the judicial discretion of the trial court to vicariously surmise a point never raised by the Appellee at trial or in the pleadings.

The trial court fully understood the Appellant's evidentiary use of the radar manuals. No better attestation as to the belief of the trial court can be found than that court's 22 November 1985 order to vacate the conviction entered after the Appellant's appeal had been awarded (Appendix p. 5A).

The Order of 22 November 1985 of the Circuit Court of Arlington County (id. 5A) cancelling the Appellant's appeal, awarded by the Court of Appeals of Virginia on 1 November 1985, interferred with the administration of justice and was in violation of Title 18 USC, Section 1503. The mandate of the Supreme Court of Virginia concerning final judgments, Rule 1:1,

Rules of Supreme Court of Virginia, is well established. The 22 November Order of the Arlington County Circuit Court evidenced bad policy and is in violation of Title 42 USC, Section 1983 *(Pembaur v. City of Cincinnati et al, S.C. No. 84-1160, 475 U.S. (1986).*

Once the Court of Appeals pierced judicial discretion, several evidentiary facts should have been considered. The certificate of calibration for the speedometer of the test vehicle before the Court was prepared after the Appellant's conviction in General District Court and after his appeal to Circuit Court, lending the appearance the Commonwealth was trying to play catch-up. The trial court order of 22 November 1985 (id. 5A) was in grievous error, having proven the trial judge capable of making serious mistakes of judgment, and should have, in itself, caused the Court of Appeals sufficient concern to examine other facts. The traffic summons described the Appellant's charge of speeding obtained from a radar site in operation from 07:30 to 15:30 hours on the day of arrest, but which cited Arlington County

Code 14-22, a hit-and-run statute. Facts presented in the radar operator's testimony had been severely questioned by the Appellant at trial and in the pleadings. The trial judge did not act on the Appellant's request to have the evidentiary certificates returned to the record for forwarding to the Court of Appeals. The Commonwealth did not put forth an expert witness at trial to refute the Appellant's professional testimony concerning radar engineering.

The Court of Appeals misapplied the standards for judicial review by singling out the Appellant to deduce a theory of intent whether the radar manuals, which had been denied by the trial court, would have been introduced as evidence; and in using that postulation to dispose of the constitutional questions set forth on appeal (Appendix p. 7A). In *Bowman* v. *U.S., 341 U.S. 214 (1951)*, this Court held, "It is not required that materials thus subpoenaed be actually used in evidence, but only that good-faith effort be made to obtain evidence . . ." Pp. 219-220.

There is a natural evidentiary relationship between the radar manuals and the performance of speed-detecting radar, the determination of operator competence, and the charge of speeding. The Statute and case law are devoid of requirements for operator competence, and it was necessary for the Appellant to fill this deficiency through his own effort. The Appellant submits that he made a good faith attempt to obtain and go forward with the evidence. "The very integrity of the judicial system and police confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense. *United States v. Nixon, 418 U.S. 683, 709 (1974).*"

* * * * * * * * * *

3. The final question concerns the Appellant's right to Petition the Supreme Court of Virginia as

provided for by statutes 17-116.07 and 17-116.08, Code of Virginia 1950 (Appendix p. 24A), and the Constitution of Virginia, Article VI, Section 1 (Appendix p. 21A) which state in pertinent part:

> . . . any party aggrieved by a final decision of the Court of Appeals may petition the Supreme Court for an appeal . . . (17-116.08). . . . any case in which the Supreme Court determines on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question . . . or matters of significant precedential value, review may be had in the Supreme Court . . . (17-116.07B). Most significantly, . . . the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person (Const. of Va.).

The Appellant contends that petition did lie to the Supreme Court of Virginia for appeal and that the Constitution and Statutes of Virginia demanded that his Petition be considered upon its merits. *Commonwealth v. Smith--Va.--, 337 S.E. 2d 278 (1985).* The examination of the Appellant's Petition in relation to "a substantial constitutional question" and its precedential value to the citizens of Virginia was required as an integral part of the constitutional duty

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

of the Supreme Court of Virginia. In this case, the Supreme Court decision had the effect of annulling Statutes enacted by the General Assembly. The referenced determination was not made as required by Virginia law, denying the Appellant equal protection of the laws and due process as provided for by the Fourteenth Amendment of the Constitution of the United States.

The decision of the Supreme Court of Virginia provided favorable treatment for the Commonwealth to the detriment of the Appellant. In the case of the *Commonwealth v. Smith*, previously referenced, the Supreme Court of Virginia, using the same Article of the Constitution of Virginia and statutes, went to great lengths to reach petition by the Commonwealth and award an appeal. In pertinent part, Article VI, Section 1 states:

> No appeal shall be allowed to the Commonwealth in a case involving the life or liberty of a person, except that an appeal by the Commonwealth may be allowed in any case involving the violation of a law relating to the State revenue.

In the Smith case, an appeal was awarded to the Commonwealth from an order of the Court of Appeals admitting an ordinary criminal to bail. Subsequently, the Supreme Court of Virginia rendered a final judgment favorable to the Commonwealth, reversing the Court of Appeals and committing the defendant to confinement. Since this appeal was not provided for by statute, the Constitution of Virginia may have prohibited the Supreme Court from considering the petition.

Contrastingly, the Appellant's right to petition the Supreme Court of Virginia for appeal was specifically set forth by statute and the Constitution of Virginia. The Supreme Court appears to apply the statutes to its own satisfaction. ". . . Apparently, the majority feels, as I do, that the law should be otherwise. But the General Assembly writes the law, and whenever, as here, the law is properly called into question in this Court, we should interpret and apply it as it was written, not as we think it should have been written." *Commonwealth v. Smith*,--*Va.*--, *337 S.E. 2d*

*278 (1985), Justice Poff, concurring in part and dissenting in part.*

These two cases under discussion portray the Supreme Court of Virginia taking extraordinary steps to favor the Commonwealth whether it means awarding an appeal to the Commonwealth or denying a citizen's petition opposed by the Commonwealth, providing unequal treatment between the Commonwealth and its citizens. Such treatment is unfair, and transgresses the specific right to justice provided the citizens of Virginia by the Constitution of Virginia, Article 1, Section 15 (Appendix p. 20A). In each instance, the Supreme Court of Virginia should have deferred to the Statutes enacted by the General Assembly, and the provisions and limitations of the Constitution of Virginia. In view of the foregoing, the Supreme Court of Virginia, in its failure to properly consider his petition, violated the Appellant's right to due process and equal protection under the Fourteenth Amendment in the manner prohibited by Title 42 USC, Section 1983.

* * * * * * * * * *

Motorists in Virginia have not received equal protection under the laws for over thirty years, since Statute 46.1-198 was invalid on the date of enactment. Modern advances in police traffic control radar technology continue to emphasize the inadequacy of a Statute, providing for the use of radar, which contains no standards. The Statute becomes more far reaching daily by encompassing greater numbers of United States citizens, unduly affecting their right to freedom of interstate travel through Virginia without receiving unjust penalties for exercising that right.

Further, the Courts of Virginia have used extraordinary means to circumvent close scrutiny of this Statute and will probably continue to do so. Therefore, this Honorable Court should accept jurisdiction in the best interests of justice, to provide relief for all citizens from this burdensome statute and from the abuse of Public Authority. In the absence of summary reversal, the incorporation of a scientific

instrument into common usage under the law may require briefs on their merits and oral argument.

## CONCLUSION

For the foregoing reasons, the Appellant submits that his Appeal brings before this Court substantial constitutional questions, concerning the validity of a Statute of Virginia, which require plenary consideration for their resolution.

Respectfully submitted,

Bill J. Cory

Bill J. Cory, Pro Se
Apartment 204
2574 Chain Bridge Road
Vienna, Virginia 22180
(703) 938-3589

7 January 1987

# APPENDIX

In the Supreme Court of Virginia

| | | |
|---|---|---|
| Bill J. Cory | ) | |
| Appellant | ) | Record No. |
| | ) | 860856 |
| v. | ) | (Court of |
| Commonwealth of Virginia | ) | Appeals No. |
| | ) | 0392-85; |
| Appellee. | ) | Circuit Court |
| | ) | No. C-22875) |

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Bill J. Cory, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment order of the Supreme Court of Virginia entered in this action on 18th day of November 1986.

This appeal is taken pursuant to Title 28 USC, Section 1257(2).

Dated: 7 January 1987.

By Bill J. Cory

Bill J. Cory, Pro Se
Apartment 204
2574 Chain Bridge Road
Vienna, Virginia 22180
(703) 938-3589

COMMONWEALTH OF VIRGINIA

VS C-22875

BILL J. CORY

The 29th day of January, 1985 came the Commonwealth of Virginia, by its Attorney, Ruth Jamison, the Defendant pursuant to his recognizance and in proper person.

THEREUPON the Defendant was arraigned and enter a plea of "Not Guilty" to the charge in the summons herein.

THEREUPON the Defendant informed the Court that this case had been previously set for a jury trial and that now the Defendant personally moved the Court for leave to try this case without the intervention of a jury, which said motion the court granted; the Court having determined that the waiver of the jury by the accused was voluntarily and intelligently given, the Commonwealth and the Court concurring in said waiver.

WHEREUPON at the request of the Defendant and with the consent of the Court, the Defendant and the Commonwealth of Virginia, the Court heard this

case, including sworn testimony without the intervention of a jury, all matters of law and fact being presented to the Court for determination.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the Defendant is "Guilty" of the charge of "Speeding 43/30" as contained in the summons herein and so finds.

IT IS THEREFORE the Judgment of the Court that the Defendant be and he hereby is ordered to pay a fine of $26.00 and the costs of these proceedings.

THE COURT CERTIFIES that at all times during the trial of this case, the accused was personally present.

THE birthdate of the Defendant is reported to be August 30, 1930.

BE IT REMEMBERED that the offense date herein was on or about October 4, 1984.

IT IS FURTHER ORDERED by the Court that the appearance bond of the Defendant be released and the surety thereon relieved and released from further liability thereon and the Clerk is hereby directed to so

indicate in his records, referring to this order for his authority.

Entered this 6th day of February 1985.

W. L. Winston

Judge

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA :

vs. : C-22,875

BILL J. CORY :

ORDER

IT IS HEREBY ORDERED by the Court that for good cause shown the conviction herein be and it hereby is vacated, the summons herein be dismissed, and the Defendant be discharged from this case.

IT IS FURTHER ORDERED by the Court that the appeal noted herein by the Defendant to the Court of Appeals of Virginia be, and it hereby is deemed withdrawn, and that the cash bond of $500 posted with the Clerk of this Court on the 12th day of November, 1985 for the aforesaid appeal be refunded and returned to the Defendant Bill J. Cory.

Entered November 22, 1985.

W.L. Winston

Judge

VIRGINIA:

In the Court of Appeals of Virginia on Thursday the 14th day of August, 1986.

Bill J. Cory, Appellant

against Record No. 0392-85

Circuit Court No. C-22875

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Arlington County on the 6th day of February, 1985.

Before Judges Baker, Coleman and Keenan

This matter came to be heard before a panel of this Court on April 16 to consider the appeal of Bill J. Cory who seeks reversal of a judgment order holding that he violated the provisions of the Arlington County code for speeding by operating a motor vehicle at 43 m.p.h. in a 30 m.p.h. zone. Appellant contends that the traffic infraction conviction, which was based

solely upon a determination by radar of the vehicle's speed, should be reversed on the following grounds:

(1) the Virginia Uniform Traffic summons upon which appellant was charged miscited the applicable section of the Arlington County code;

(2) the evidence was insufficient to support the conviction because the record does not contain the certificate of calibration for the radar unit or the certificate of calibration for the speedometer of the test vehicle;

(3) the trial court erred by quashing appellant's subpoena duces tecum directed to the Arlington County Police Department for the operating instructions and operational and employment manuals for the radar unit, which action appellant contends denied him due process by depriving him of access to evidence necessary to prove a lack of competence on the part of the radar operator and to prove that the radar unit was improperly employed; and

(4) the section of the Arlington County Code which provides for checking on speed with electrical devices and Virginia Code § 46.1-198 are constitutionally unsound.

We address the issues seriatim.

The appellant raised no objection in the trial court that the traffic summons cited him for a violation of Section 14-22 of the Arlington County code, which deals with the duty of a driver to stop in the event of an accident, rather than the code section

for speeding. We will not consider an objection made for the first time on appeal, unless good cause to do so has been shown or unless it is necessary to enable this Court to attain the ends of justice. Rule 5A:18. The descriptive portion of the summons informed the appellant of the charge of speeding of 43 m.p.h. in a 30 m.p.h. zone. Since appellant claims no surprise or prejudice or the denial of an opportunity to defend, we decline to consider the merits of this claim.

Appellant's second contention challenges the sufficiency of the evidence to prove the accuracy of the radar unit used to measure the speed of his vehicle and the accuracy of the speedometer of the test vehicle used to calibrate the radar unit. Appellant argues that the certificates of calibration, while introduced at trial, were not made part of the record, and thus on appeal the record does not contain certificates in conformity with Virginia Code § 46.1-198 (al). Appellant asserts that such omission from the record requires reversal because on review we cannot ascertain from the record whether the Commonwealth established the accuracy of the equipment used to

obtain the results which could be accepted as prima facie evidence of the motor vehicle's speed. Although no transcript of the trial court proceeding was made, appellant submitted a written statement of fact pursuant to Rule 5A:8(c) which was, in pertinent part, certified by the trial judge. The record includes a statement of fact that the "test vehicle's speedometer had been properly calibrated and [the prosecuting officer] produced the supporting documents to demonstrate the accuracy of the radar unit and the test vehicle speedometer calibration." Based on this record, the certificates of calibration established that the radar unit and test vehicle's speedometer had been calibrated and had been found to be accurate. Sweeny v. Commonwealth, 211 Va. 668, 671, 179 S.E.2d 509 (1971). While the statement of fact fails to disclose the date on which such determinations were made, the certificate was presented to the trial judge and the finding of fact is presumed to be based upon competent and relevant evidence, in the absence of any proof to the contrary. The radar results are prima

facie evidence of the vehicle's speed and are sufficient to sustain the conviction. Code § 46.1-198 (a).

A panel of this Court granted the petition for appeal to consider whether the trial court erred in quashing the appellant's subpoena duces tecum which sought the operating instructions and operational manual for the radar unit in the possession of the Arlington County Police Department. On brief and at oral argument, appellant conceded that the purpose for the subpoena duces tecum was for discovery, rather than for the production of the manuals as evidence at trial. Appellant acknowledges that he sought the manuals solely for the purpose of conducting independent engineering analysis.

We need not now consider whether appellant, when charged with a traffic infraction, was entitled to and deprived of a right to compulsory process to acquire evidence to present at trial under the provisions of the fifth or sixth amendments of the United States Constitution and Article I, Section 8, of the Constitution of Virginia. The manufacturer's operational and instructional guides were not to be

introduced in evidence by either party and to the extent that defendant desired their use to prepare engineering studies, the manuals were not shown by the defendant to be inaccessible from other sources. Appellant was not entitled to discovery of materials which admittedly were not intended to be used as evidence and the court did not err in quashing the subpoena seeking solely to discover information. Cf. Rule 3A:11. See generally Bowman v. U.S., 341 U.S. 214, 221 (1951).

Appellant challenges the competence of the radar operator, specifically contending that the radar unit she had set up was improperly employed to measure his vehicle's speed. The record indicates that appellant had ample opportunity to cross examine the radar operator on all aspects of the radar operation, its manner of employment, and, in fact, did so on many aspects. The trial judge heard her testimony and presumably accorded it the weight he deemed appropriate. Based on the evidence contained in the statement of fact, we find no reason to disturb the findings of the trial court.

Appellant's final contention is that Virginia Code § 46.1-198 (and presumably the parallel provisions of the Arlington County code) are constitutionally unsound because of vagueness or overbroadness in failing to provide time limits for calibrating and testing the accuracy of the radar unit and speedometer of the test vehicle, and in failing to contain training and certification requirements for radar operators and specific definitions of calibration for accuracy. The constitutionality of Virginia Code § 46.1-198 has been upheld by the Supreme Court of Virginia. Dooley v. Commonwealth, 198 Va. 32, 92 S.E.2d 348 (1956), appeal dismissed, 354 U.S. 915 (1957); Royals v. Commonwealth, 198 Va. 876, 96 S.E.2d 812 (1957). We cannot say that the statute which contains adequate safeguards to assure that the speed measuring device is accurate is unconstitutionally vague or overbroad by making the results measured prima facie proof of a vehicle's speed. We find no merit in appellant's contentions.

Finding no error, we affirm the judgment order finding appellant in violation of the provisions of the

Arlington County code prohibiting the operation of a motor vehicle in excess of the posted speed limit. This order shall be certified to the trial court.

A Copy,

Teste:

David B. Beach, Clerk

By:

Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 18th day of November, 1986.

Bill J. Cory, Appellant,

against Record No. 860856

Court of Appeals No. 0392-85

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Because no appeal lies to this Court from the decision of the Court of Appeals, the Court dismisses the petition for appeal filed in the above-styled case. Code § 17-116.07.

A Copy,

Teste:

Clerk

# CONSTITUTION OF THE UNITED STATES

In pertinent part:

## ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States . . .

## ARTICLE [V.]*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be

twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE [VI.]*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE [XIV.]*

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction

thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* [] Amendments to the Constitution.

TITLE 42 USC

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

# CONSTITUTION OF VIRGINIA

## ARTICLE I

§ 8. Criminal Prosecutions.--That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation to be confronted with the accusers and witnesses, and to call for evidence in his favor, and he shall enjoy the right to a speedy and public trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers, nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

Laws may be enacted providing for the trial of offenses not felonious by a court not of record without a jury, preserving the right of the accused to an appeal to and a trial by jury in some court of record having original criminal jurisdiction. Laws may also provide for juries consisting of less than twelve, but not less than five, for the trial of offenses not felonious, and

may classify such cases, and prescribe the number of jurors for each class.

In criminal cases, the accused may plead guilty. If the accused plead not guilty, he may, with his consent and the concurrence of the Commonwealth's Attorney and of the court entered of record, be tried by a smaller number of jurors, or waive a jury. In case of such waiver or plea of guilty, the court shall try the case.

The provisions of this section shall be self-executing.

§ 14. Government should be uniform.—That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

§ 15. Qualities necessary to preservation of free government.—That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation,

temperence, frugality, and virtue; by frequent recurrence to fundamental principles; and by the recognition by all citizens that they have duties as well as rights, and that such rights cannot be enjoyed save in a society where law is respected and due process is observed.

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has shown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.

## ARTICLE VI.

### Judiciary.

§ 1. Judicial power; jurisdiction.—The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time

establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record.

The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of habeas corpus, mandamus, and prohibition and in matters of judicial censure, retirement, and removal under Section 10 of this Article. All other jurisdiction of the Supreme Court shall be appellate. subject to such reasonable rules as may be prescribed as to the course of appeals and other procedural matters, the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person.

No appeal shall be allowed to the Commonwealth in a case involving the life or liberty of a person, except that an appeal by the Commonwealth may be allowed in any case involving the violation of a law relating to the State revenue.

Subject to the foregoing limitations, the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth.

CODE OF VIRGINIA 1950

§17-116.07. **Disposition of appeals; finality of decisions.**—A. Each appeal of right taken to the Court of Appeals and each appeal for which a petition for appeal has been granted shall be considered by a panel of the court.

When the Court of Appeals has (i) rejected a petition for appeal, (ii) dismissed an appeal in any case in accordance with the Rules of Court, or (iii) decided an appeal, its decision shall be final, without appeal to the Supreme Court, in:

1. Traffic infraction and misdemeanor cases where no incarceration is imposed;

2. Cases originating before any administrative agency or the Industrial Commission of Virginia; and

3. Cases involving the affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 11(§ 63.1-220 et seq.) of Title 63.1.

B. Notwithstanding the provisions of paragraph A, in any case in which the Supreme Court determines on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value, review may be had in the Supreme Court in accordance with the provisions of § 17-116.08 (1983, c. 413; 1984, c. 701.)

§ 17-116.08. **Review by the Supreme Court.**—Except where the decision of the Court of Appeals is made final under § 17-116.07, any part aggrieved by a final decision of the Court of Appeals may petition the Supreme Court for an appeal. The Commonwealth, or any county, city, or town, may also petition the Supreme Court for review pursuant to § 19.2-317. The granting of such petitions shall be in the discretion of the Supreme Court. (1983, c. 413.)

§ 46.1-198. **Checking on speed with electrical devices; certificate as to accuracy of device; arrest without warrant.**—(a) The speed of any motor vehicle may be checked by the use of radio microwaves or other electrical device. The results of such checks

shall be accepted as prima facie evidence of the speed of such motor vehicle in ay court or legal proceedings where the speed of the motor vehicle is at issue.

(a1) In any court or legal proceedings in which any question arises about the calibration or accuracy of any radio microwave or other electrical device used to check the speed of any motor vehicle, a certificate, executed and signed by the officers calibrating or testing such device for its accuracy, and stating the time of such test, type of test and results of testing when such certificate is accompanied by a certificate, or a true copy thereof, showing the calibration or accuracy of the speedometer of any vehicle employed in calibrating or testing such device, and when and by whome such speedometer calibration was made shall be admissable when attested by one such officer who executed and signed it as evidence of the facts therein stated and the results of such testing.

(b) The driver of any such motor vehicle may be arrested without a warrant under this section provided the arresting officer is in uniform and displays his badge of authority; provided that such officer has

observed the registration of the speed of such motor vehicle by the radio microwaves or other electrical device, or has received a radio message from the officer who observed the speed of the motor vehicle registered by the radio microwaves or other electrical device; provided in case of an arrest based on such a message that such radio message has been dispatched immediately after the speed of the motor vehicle was registered and furnished the license number or other positive identification of the vehicle and the registered speed to the arresting officer.

(c) [Repealed.]

(d) Nothing herein shall affect the powers of cities or towns to adopt and use such radio microwaves or other electrical devices to measure speed. (Code 1950 (Suppl.), § 46-215.2; 1954, c. 313; 1956, c. 216; 1958, c. 541; 1966, c. 585; 1968, c. 497; 1974, c. 554.)

BEST AVAI

Arlington County, Virginia #9169
Equipment No.

**Speedometer Accuracy Test Certificate Tested On An Electric Dynamometer**

This Is To Certify That 1980 CHEV 73M1485
Year Make License No.

| Speedometer Reads | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TRUE SPEED | 25 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | 75 | 80 |

All answers supplied and completely subscribed and sworn to before me this 10
day of [illegible] 19 87

My Commission Expires September 12 19 87

10-16-87
Date

[illegible]
Notary Public

Vehicle Calibrated by [illegible] 10-16-87
Name Date

2020-89

Calibrated 10 at B/C

28A

ABLE COPY

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COUNTY OF FAIRFAX
Equipment Management Transportation Agency

SPEEDOMETER CALIBRATION CHECK

Vehicle Number 3576 Date Checked 12/23/85

Type Vehicle Marked Cruiser Make Ford Year 1985

| SPEEDOMETER READING | SPEED-MASTER READING |
|---|---|
| 25 | 25 |
| 35 | 35 |
| 45 | 46 |
| 55 | 57 |
| 65 | 67 |
| 75 | 77 |
| 85 | 88 |

Odometer reading 16376

Location (circle one)

(Germantown) Newington

Tire Size P225/70HR15

This is to verify that the above speedometer was checked on the above date and the readings (as indicated) are accurate and true

12/23/85 Charles H. Powell Jr.
Date Mechanic

A COPY TESTE:
WARREN E. BARRY, CLERK
By Virginia L. Detwiler
Deputy Clerk

State of Virginia,
County of Fairfax, to-wit:

I, the undersigned, a Notary Public in and for the County aforesaid, State of Virginia, do hereby certify that Charles H. Powell Jr. whose name is signed to the foregoing and hereunto annexed calibration check, has this day personally appeared before me and made oath that the matters and things stated therein are true to his knowledge, information and belief.

Given under my hand this 23 day of December, 1985.

My commission expires:

March 14, 1987

Donald L. Howe 48293
Notary Public

5 15 86